

Memorandum

To: David L. Litchliter

Date: October 14, 2005

Re: Evaluation and recommendation of proposals received in response to RFP No. 4000-35696 for the acquisition of the following categories of technology and services by the **Mississippi Department of Information Technology Services (ITS)** to continue the State of Mississippi telecommunications infrastructure operations over a ten (10) year contracting term: (1) InterLATA Private Line Services, (2) Direct Internet Access, (3) Dial-up Internet Access, (4) Broadband Internet Access, (5) WAN Equipment and Integrated Services, (6) Statewide Data and Voice Network Services, (7) IntraLATA Long Distance, (8) InterLATA Long Distance, and (9) Toll Free Service.

1. BACKGROUND AND APPLICATION

In November 1998, the ITS Board approved ITS' recommendation for the acquisition of statewide telecommunication services through RFP 3000. The State has used the contracts associated with RFP 3000 since that time to acquire the required telecommunication services for the State of Mississippi. The State recognizes and acknowledges that new competition now exists for many telecommunications service offerings. The State of Mississippi is committed to taking advantage of this competition for its benefit. RFP 4000 was issued on August 9, 2005, to procure voice and data network services for the State of Mississippi to be administered by the Mississippi Department of Information Technology Services (ITS). The RFP was broken down into nine distinct sections for response and evaluation. The vendors were also allowed to provide proposals with bundled solutions. It was the desire of the State to take advantage of discounts based on the bundling of services where applicable, but the State reserved the right to make awards for individual categories. Those nine categories are listed below.

- (1) InterLATA Private Line Services
- (2) Direct Internet Access
- (3) Dial-up Internet Access
- (4) Broadband Internet Access
- (5) WAN Equipment and Integrated Services
- (6) Statewide Data and Voice Network Services
- (7) IntraLATA Long Distance
- (8) InterLATA Long Distance
- (9) Toll Free Service

The primary objectives of the RFP were to obtain high quality, reliable telecommunication services for all State entities at the lowest possible cost and to expend State funds in such a manner as to promote enhancements to the State's telecommunication infrastructure that

would result in better services for the State's private customers, business/industry, and citizenry.

Contracts for these services will provide guaranteed pricing that will not increase over a ten year term. Given the long term of this contract, the State will validate that the contract pricing is still competitive through a price re-determination process where throughout the life of the contract the State will compare then current contract rates to the then current industry market and give the contract holder an opportunity to modify their rates to come in line with industry pricing. If the State and the contract provider cannot agree on revised pricing, the State reserves the right to terminate the contract with cause and without penalty and seek other options.

The services requested in RFP 4000 will primarily target ITS use. However, ITS will make these services available for K-12 schools, libraries, universities and community colleges. The community colleges and universities may use the contracts for administrative as well as student resale purposes. Contracts originating from RFP 4000 will be posted for e-rate eligibility. As a requirement, vendors must provide the same rate to the K-12 schools, libraries, community colleges, and universities as they provide to the state.

2. PROPOSAL RESPONSES

On August 9, 2005, eight (8) vendors responded to this RFP. BellSouth, ITC DeltaCom, AT&T, BCI, Venture, Global Data, Pileum, and Qwest submitted proposals. BellSouth responded to each section in the RFP. ITC DeltaCom responded to section VIII, section XIV, section XV, and section XVI of this RFP. AT&T responded to section VIII, section IX, section XIV, section XV, and section XVI of this RFP. Qwest responded to section IX, section X, section XIV, section XV, and section XVI of this RFP. BCI, Global Data, Venture, and Pileum responded only to section XII of this RFP.

Section VIII – InterLATA Private Line Services

AT&T, BellSouth, and ITC responded to section VIII of RFP 4000. The proposal results for section VIII are attached as **Exhibit A**. ITC and BellSouth met the requirements for this section of RFP 4000. AT&T did not meet the requirements and was disqualified. ITC's pricing was significantly lower than the other respondents and ITC is the incumbent vendor.

Section IX – Dedicated Internet Access

AT&T, BellSouth, and Qwest responded to section IX of RFP 4000. The proposal results for section IX are attached as **Exhibit B**. Qwest and BellSouth met the requirements for this section of RFP 4000. AT&T did not meet the requirements and was disqualified. BellSouth's proposal was the lowest and best and BellSouth is the incumbent vendor.

Section X – Dialup Internet Access

BellSouth and Qwest responded to section X of RFP 4000. The proposal results for section X are attached as **Exhibit C**. Qwest and BellSouth met the requirements for this

section of RFP 4000. BellSouth's proposal was the lowest and best and BellSouth is the incumbent vendor.

Section XI – Broadband Internet Access

BellSouth was the only respondent to this section of RFP 4000. The intent under this section was to establish a single award, statewide contract, with the greatest possible coverage for broadband services statewide. If broadband services are available under this contract in the required geographic location(s), state government entities and universities must purchase these services from this contract. Because the availability of broadband is limited geographically, the State intends to establish an exemption process for customers to get broadband (DSL, cable-modem, etc) access where the statewide contract cannot provide these services.

Section XII – WAN Equipment and Integrated Services 27

BellSouth, BCI, Venture, Global Data, and Pileum responded to section XII of RFP 4000. The proposal results for section XII are attached as **Exhibit D**. BellSouth, BCI, Venture, and Global Data met the requirements for this section of RFP 4000. Pileum did not meet the requirements and was disqualified. BCI's proposal was the lowest and best and BCI is the incumbent vendor.

Section XIII – Statewide Data and Voice Network Services

BellSouth was the only respondent to this section of RFP 4000. There were several vendors that attended the bidder's conference and that submitted bids for other categories, but chose not to bid to this category. Because there was only one bid to this category, we have spent extra time scrutinizing the BellSouth proposal, requesting detailed clarifications, and documenting special contractual requirements to insure cost effectiveness and flexibility in management of the contract exist prior to approval. Additionally, we have taken a sampling of the services proposed under this category and solicited comparative pricing analysis from South Carolina and Georgia, both of whom have awarded contracts to BellSouth for similar network services in their states over the last two years. A comparative analysis will be provided at the ITS Board meeting.

Section XIV – IntraLATA Long Distance 29

AT&T, BellSouth, ITC, and Qwest responded to section XIV of RFP 4000. The proposal results for this section are attached as **Exhibit E**. All responding vendors met the requirements for the inter-LATA section of RFP 4000. BellSouth's proposal was the lowest and best and BellSouth is the incumbent vendor.

Section XV – InterLATA and International Long Distance

AT&T, BellSouth, ITC, and Qwest responded to section XV of RFP 4000. The proposal results for this section are attached as **Exhibit F**. All responding vendors met the requirements for the inter-LATA section of RFP 4000. ITC's proposal was the lowest and best and ITC is the incumbent vendor.

Section XVI – Toll Free Services

AT&T, BellSouth, ITC, and Qwest responded to section XVI of RFP 4000. The proposal results for this section are attached as **Exhibit G**. All responding vendors met the

requirements for the inter-LATA section of RFP 4000. ITC's proposal was the lowest and best and ITC is the incumbent vendor.

3. PROPOSAL EVALUATION RESULTS

Definitions

Unbundled: Looking at every category within the bid as a separate award to the lowest and best bidder. The unbundled option would award a winner for each category based on highest score (combination of technical and cost scores).

Bundled: BellSouth proposal that included every category but InterLATA Private Line services. The bundle proposal would make BellSouth the exclusive provider of all services, including the WAN equipment and services category, where the option existed to make a multi-award to all competitive bidders.

The evaluation results for the evaluation described below are attached as **Exhibit H**.

Description of evaluation methodology:

We began this process by reviewing the categories and establishing who the winner's would be for each category based on the highest score. It was determined that the individual awards per category would be as follows:

Category	Highest Scoring Bidder
InterLATA Private Line Services	ITC/Deltacom
Dedicated Internet Access	BellSouth
Dial Internet Access	BellSouth
Broadband Internet Access	BellSouth (only one bid received)
WAN Equipment and Services	* BCI (Global Data Systems, Venture, BellSouth)
Statewide Voice and Data Services	BellSouth (only one bid received)
InterLATA Long Distance	ITC/Deltacom
IntraLATA Long Distance	BellSouth 29
Toll Free Long Distance	ITC/Deltacom

* A multi-award would be made for this category to all valid bidders in that category

Since the comparison was to be between the unbundled categories and the BellSouth bundled proposal, we made the following adjustments to the evaluation:

- The InterLATA Private Line category was not considered since it was not included in the BellSouth bundled proposal. This category would be awarded to ITC/Deltacom.
- The Broadband Internet Access category was not considered since there was only one bid, therefore those cost would not affect the bottom line.
- A five year life cycle cost was not calculated for the Statewide Voice and Data category since there was only one bid. However, since there were "incentives"

- included as part of the bundled proposal that reduced the cost in this section, a rough inventory was used to estimate the five year life cycle cost savings in this category.
- There were price incentives in the Dedicated Internet Access category and all three long distance categories that were used to recalculate BellSouth's costs in each category.

The primary focus of the Unbundled versus Bundled evaluation was to include the Dedicated Internet Access, Dial Internet Access, Wan Equipment and Services, and all three long distance categories.

For the unbundled solution we began by taking these six categories and totaling their five year lifecycle cost. We then took the cost weights for each category and averaged those to get the cost weight for this evaluation. This cost weight was used in calculating cost points for the evaluation. Next we took the technical scores from each of the winning bidder's and averaged them to get an overall technical score. Finally, we took the technical score and the cost score and added them for the final score for the unbundled solution.

We followed the exact same process for the bundled solution, except we made the necessary adjustments in costs based on the incentives proposed by BellSouth.

We then compared the evaluation scores to determine if the proposal should be awarded as a bundled solution. Based on the scoring that indicated that the BellSouth bundled proposal was both high score and lost cost over the five year life cycle, the decision was made to move into the contract negotiation phase of the project.

4. STAFF RECOMMENDATION

The ITS staff recommends the selection of ITC DeltaCom as lowest and best vendor responding to Section VIII of the RFP to provide InterLATA private line services to the State over a term of ten (10) years subject to price redetermination occurring at each successive two year interval over the term.

The ITS staff recommends the selection of BellSouth as lowest and best vendor responding to Section IX, Section X, Section XI, Section XII, Section XIII, Section XIV, Section XV, and Section XVI of the RFP to provide Bundled Services to the State for Direct Internet Access, Dial-up Internet Access, Broadband Internet Access, WAN Equipment and Integrated Services, Statewide Data and Voice Network Services, IntraLATA Long Distance, InterLATA Long Distance, and Toll Free Service over a term of ten (10) years subject to price redetermination occurring at each successive two year interval over the term.

5. SOURCE OF FUNDING

Funding for this project will be 100% State funding.

Jay White, Technology Consultant

EXHIBIT A
INTERLATA PRIVATE LINE SERVICES

VENDOR/ MANUFACTURER	Possible Points	ITC DeltaCom	BellSouth
Functional/Technical Specifications	30.0	17.2	18.4
Vendor's organization and experience	20.0	12.0	13.1
Added Value	5.0	0.0	0.0
* References	10.0	0.0	0.0
Total Points (Excluding Cost)	65.0	29.2	31.5
Cost Points	40.0	40.0	0
Total Score	105.0	69.2	31.5
** Five Year Lifecycle Cost		\$153,120	\$1,213,200

* We did not give points for references for either vendor. ITC is the incumbent vendor and ITS and ITC has been very satisfied with ITC's services. The reference score would not have made a difference in the outcome of the evaluation.

** Under this section the cost model used incorporated the two primary circuits that exist today in support of the legacy backbone network. These include a DS3 to Memphis and an OC3 to Gulfport. It is estimated that these circuits will remain the same during the first five years of the contract so the cost analysis was calculated as the five year lifecycle cost of these two circuits.

EXHIBIT B
DEDICATED INTERNET ACCESS

VENDOR/ MANUFACTURER	Possible Points	BellSouth	Qwest
Functional/Technical Specifications	30.0	18.3	16.5
Vendor's organization and experience	25.0	15.9	15.6
Added Value	5.0	0.0	0.0
References	10.0	9.6	9.3
Total Points Excluding Cost	70.0	43.8	41.4
Cost Points	35.0	35.0	31.2
Total Score	105.0	78.8	72.6
* Five Year Lifecycle Cost		\$3,816,600	\$4,229,588

* Today for our Dedicated Internet Access we have a direct connection from BellSouth Internet into our statewide network and each of the universities and the logical networks have virtual circuits pointed to that Internet POP. What this provides the state is the cost savings that comes with aggregated access and the flexibility for each university and logical network to call the BellSouth NOC when they have problems. This same design was requested under RFP 4000 to continue to allow the flexibility provided through this configuration. As the two proposals were reviewed, it was determined that BellSouth proposed the requested configuration, but Qwest did not. Qwest proposal dropped an Internet connection off to ITS and then ITS would have to act as the distribution point for Internet Access statewide. What was not included in the Qwest proposal was the cost for the local loop (two OC12s initially and two OC48s during the coming months) from ITS to the backbone to facilitate access from the universities and logical networks, the cost for the CPE (including maintenance and insurance) to terminate the local loop and the Qwest circuit, and the cost of engineering, project management, and NOC staff to support the universities and logical networks directly. Using conservative estimates, we calculated the cost for these items and added those cost to the Qwest proposal to allow an apples to apples comparison. Additionally, in calculating the five year cost we started at 600Mbps (we are currently at 540Mbps) and estimated a 100Mbit upgrade per year based on the fact that we have averaged 90Mbps per year growth for the last several years.

EXHIBIT C
DIALUP INTERNET ACCESS

VENDOR/ MANUFACTURER	Possible Points	BellSouth	Qwest
Functional/Technical Specifications	30.0	18.7	16.8
Vendor's organization and experience	20.0	13.5	12.2
Added Value	5.0	0.0	0.0
References	10.0	8.9	10.0
Total Points Excluding Cost	65.0	41.1	39.6
Cost Points	40.0	40.0	32.0
Total Score	105.0	81.1	71.6
* Five Year Lifecycle Cost		\$300,000	\$360,000

* Dial Internet Access was relatively straight forward. The cost per account was calculated using the current number of accounts and projecting growth over the next five years. The five year life cycle cost was total of current and projected volume for the five year period.

EXHIBIT D
WAN Equipment and Integrated Services

VENDOR/ MANUFACTURER	Possible Points	BCI	Global Data	Venture	BellSouth
Functional/Technical Specifications	30.0	18.2	17.6	18.0	18.1
Vendor's organization and experience	20.0	12.2	11.3	12.0	12.7
Added Value	5.0	0.0	0.0	0.0	0.0
References	10.0	9.6	9.6	9.0	9.3
Total Points (Excluding Cost)	65.0	40.0	38.5	39.0	40.1
Cost Points	40.0	38.6	40.0	38.6	36.8
Total Score	105.0	78.6	78.5	77.6	76.9
* Five Year Lifecycle Cost		\$22,238,000	\$21,476,720	\$22,215,725	\$23,183,625

* In the WAN Equipment and Services category we have multiple rates/discounts based on the various services that are included under this section including installations, repairs, modifications, upgrades, Cisco Smartnet maintenance, and purchasing of Cisco equipment. We began by requesting an inventory of the services provided from our current provider for the period from July 2004 to June 2005. These numbers were used to calculate annual service cost for installs, upgrades, etc. Next we took known maintenance contracts for state government and the MS Department of Education and used them as the benchmark to estimate annual maintenance expenditures. Finally we took the known average annual purchases that were processed through ITS of approximately \$3.8 million annually and rounded that up to \$5 million to include those purchases that are not recorded with ITS (school districts, community colleges, etc). The final five year life cycle cost were captured by using each vendor's proposed service rates, maintenance discounts, and purchase discounts to calculate their individual annual cost for each component and then multiplying by five.

Note: No ITC bid, see

No AT&T bid, see

No Qwest bid, see

No Pileum bid, as it was disqualified.

EXHIBIT E
INTRALATA LONG DISTANCE

VENDOR/ MANUFACTURER	Possible Points	BellSouth	ITC DeltaCom	Qwest	AT&T
Functional/Technical Specifications	30.0	18.2	18.2	17.5	16.1
Vendor's organization and experience	20.0	13.0	12.0	12.6	12.2
Added Value	5.0	0.0	0.0	0.0	0.0
References	10.0	9.5	9.8	9.5	9.8
Total Points (Excluding Cost)	65.0	40.7	40.0	39.6	38.1
Cost Points	Δ (40.0) 1st	40.0 2nd	38.0 3rd	31.0 4th	25.2
Total Score	105.0	80.7	78.0	70.6	63.3
Cost Per Minute		\$ \$0.020	\$ \$0.021	\$ \$0.0245	\$ \$0.0274
* Five Year Lifecycle Cost		\$1,824,553	\$1,915,780	\$2,235,077	\$2,499,637

* IntraLATA Long Distance calling was relatively straight forward. The cent per minute rate was multiplied by the total number of minutes provided by the state and universities to calculate an annual cost. The five year life cycle cost was also calculated and used in the analysis.

Legend:

Δ - Cost is given the most possible points.
 1st - BellSouth offered the cheapest service, and won the contract.
 2nd - ITC was second cheapest
 3rd - Qwest was fourth cheapest
 4th - AT&T

Note: No Pileum bid - see
 No Global bid - see
 No Venture bid - see
 No BCI bid - see

EXHIBIT F
INTERLATA AND INTERNATIONAL LONG DISTANCE

VENDOR/ MANUFACTURER	Possible Points	ITC DeltaCom	Qwest	AT&T	BellSouth
Functional/Technical Specifications	30.0	18.1	17.6	16.8	18.1
Vendor's organization and experience	20.0	12.0	12.5	12.2	13.0
Added Value	5.0	0.0	0.0	0.0	0.0
References	10.0	9.8	9.5	9.8	9.5
Total Points (Excluding Cost)	65.0	39.9	39.6	38.8	40.6
Cost Points	40.0	40.0	26.6	26.1	7.4
Total Score	105.0	79.9	66.2	64.9	48.0
Cost Per Minute		Switched: \$0.021 Dedicated: \$0.0165	Switched: \$0.030 Dedicated: \$0.0170	Switched: \$0.030 Dedicated: \$0.0180	Switched: \$0.040 Dedicated: \$0.0252
* Five Year Lifecycle Cost		\$1,072,358	\$1,430,584	\$1,446,008	\$1,946,519

* InterLATA/International Long Distance calling was relative straight forward. The Capitol Complex telephone switch and the University of Mississippi are the only entities that use dedicated facilities for placing InterLATA/International calls. The University of Mississippi currently uses BellSouth Long Distance as their carrier. The remaining state agencies and universities make InterLATA/International calls through switched facilities. The total annual cost was calculated by multiplying the total number of minutes (dedicated and switched) with the corresponding rate. The five year life cycle cost was also calculated and used in the analysis.

EXHIBIT G
TOLL FREE SERVICES

VENDOR/ MANUFACTURER	Possible Points	ITC DeltaCom	Qwest	AT&T	BellSouth
Functional/Technical Specifications	30.0	18.0	17.4	16.2	17.6
Vendor's organization and experience	20.0	12.0	12.5	12.2	13.0
Added Value	5.0	0.0	0.0	0.0	0.0
References	10.0	9.8	9.5	9.8	9.5
Total Points (Excluding Cost)	65.0	39.8	39.4	38.2	40.1
Cost Points	40.0	40.0	28.2	25.1	3.8
Total Score	105.0	79.8	67.6	63.3	43.8
Cost Per Minute		Switched: \$0.0210	Switched: \$0.0272	Switched: \$0.0288	Switched: \$0.0400
* Five Year Lifecycle Cost		\$1,091,265	\$1,413,448	\$1,496,592	\$2,078,600

* Toll Free Services was relatively straight forward. The cent per minute rate was multiplied by the total number of minutes provided by the state to calculate an annual cost. The five year life cycle cost was also calculated and used in the analysis.

EXHIBIT H

RFP 4000 EVALUATION

RFP 4000 Sections	DIA (BellSouth)	Dial (BellSouth)	WAN (BCI)	Inter LD (ITC)	Intra LD (BellSouth)	Toll (ITC)	Total
5 Year Lifecycle Cost	\$3,813,600	\$300,000	\$22,238,000	\$1,072,358	\$1,824,553	\$1,091,265	\$30,339,776
RFP 4000 Sections	DIA	Dial	WAN	Inter LD	Intra LD	Toll	Total
Total Cost-BB	\$2,970,000	\$300,000	\$23,183,625	\$1,552,343	\$912,276	\$1,300,165	\$28,725,749
BellSouth Bundle Credit	\$1,000,000						
Statewide Data and Voice Network Savings	\$492,660						
RFP 4000 Sections	DIA (BellSouth)	Dial (BellSouth)	WAN (BCI)	Inter LD (ITC)	Intra LD (BellSouth)	Toll (ITC)	
Technical Score	43.90	41.00	40.00	39.90	40.70	39.80	40.88
BellSouth Bundle Technical Score	43.90	41.00	40.10	40.50	40.70	40.10	41.05
Cost Weight	35.00	40.00	40.00	40.00	40.00	40.00	39.17
Cost Score	\$30,339,776.00	\$28,725,749.00	36.97				
Tech Score	40.88	36.97	77.85				
BellSouth Bundle Total Score	41.05	39.17	80.22				

CONTRACT NUMBER 4000-1
PROJECT NUMBER 35696
TELECOMMUNICATIONS PRODUCTS AND SERVICE AGREEMENT
BETWEEN
BELLSOUTH MNS, INC.
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR
THE AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI

This Telecommunications Products and Service Agreement is entered into by and between BellSouth MNS, Inc., a Delaware corporation having a principal place of business at 2180 Lake Boulevard, Atlanta, Georgia 30319 (hereinafter referred to as "Contractor"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS") as contracting agent for the governmental agencies, educational institutions and governing authorities of the State of Mississippi (hereinafter referred to as "Customer"). ITS and Customer are sometimes collectively referred to herein as "State".

WHEREAS, ITS, pursuant to RFP No. 4000 requested proposals for the acquisition and installation of telecommunications products and services for the State of Mississippi to be administered by ITS; and

WHEREAS, the Contractor was the successful proposer in an open, fair and competitive procurement process to provide direct internet access, dial-up internet access, broadband internet access, wide area network ("WAN") equipment and integrated services, statewide data and voice network services, IntraLATA long distance, InterLATA long distance, and toll free long distance services;

NOW THEREFORE, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 TERM OF AGREEMENT AND PRICE RE-DETERMINATION

1.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, the effective date of this Agreement shall be the date it is signed by all parties and shall continue in effect until the close of business on June 30, 2016. It is understood by the parties that the implementation dates for each of the various service categories specified herein will be as stated in the exhibits attached hereto. At the end of the initial term, this Agreement may, upon the written agreement of the parties, be renewed for two (2) additional one (1) year terms, or such other period of time as is mutually agreed upon. Sixty (60) days prior to the expiration of the initial term or any renewal term of this Agreement, Contractor shall notify ITS in writing of the impending expiration and thereafter ITS shall notify the Contractor of its intent to either renew or cancel the Agreement.

1.2 The parties agree that price re-determination will be conducted during months twenty-four (24), forty-eight (48), seventy-two (72), and ninety-six (96) of the Agreement, with the pricing firm and not subject to being increased during any such two (2) year period of the Agreement. It is understood that if after good faith negotiations during any cycle of price re-determinations, the parties are unable to agree on the pricing, ITS may, in its sole discretion, elect to terminate the services for which agreement was not reached in whole or in part pursuant to Article 11 herein and issue a request for proposals for the services so terminated. The parties understand and agree that no contract rates will increase as a result of the bundled award being dismantled, and no re-payment by the State of the bundle incentive credit will be required under any circumstances.

ARTICLE 2 SCOPE OF SERVICES

2.1 A full description of the scope of services to be provided by Contractor for each category of service pursuant to this Agreement is set forth in Exhibit A through Exhibit J which are attached hereto and incorporated herein by reference.

2.2 Contractor shall adhere to all installation, testing, cut-over and acceptance specifications, requirements and standards as set forth in RFP No. 4000.

2.3 Contractor shall be responsible for replacing, restoring or bringing to at least original condition any damage to floors, ceilings, walls, furniture, grounds, pavements, sidewalks, and the like, caused by its personnel and operations, and its subcontractors' personnel and operations subject to final approval of ITS. The repairs will be done only by technicians skilled in the various trades involved, using materials and workmanship to match those of the original construction in type and quality.

2.4 Contractor shall adhere to the support service specifications, requirements, standards and response times as specified in RFP No. 4000.

2.5 Contractor guarantees the pricing for the life of this Agreement, and acknowledges that while the pricing may be decreased, it may not be increased during the term of this Agreement.

2.6 It is understood by the parties that Contractor shall offer all state contract rates to K-12 schools, libraries, community colleges, and governing authorities, at ITS' discretion, with the understanding that these particular entities, which are not under ITS statutory authority, may choose to select some, but not all, of the state contract services. Contractor agrees to seek prior approval from ITS for any entities or institutions which are not under ITS statutory authority that request use of this Agreement and related pricing elements and that agree to sign the Letter of Agreement in Exhibit I. Contractor also agrees to provide ITS with copies of all executed Letters of Agreement (Exhibit I) signed by these entities and institutions.

ARTICLE 3 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Customer location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of

the staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Contractor employees and subcontractors who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy.

ARTICLE 4 CONSIDERATION AND METHOD OF PAYMENT

The State agrees to pay the Contractor for the services rendered at the prices set forth in the Contractor's Proposal as accepted by the State in response to RFP No. 4000. Additional terms regarding pricing are set forth in Exhibit J which is attached hereto and incorporated herein by reference. The Contractor shall submit an invoice with the appropriate documentation to the State as services are rendered. The State may, in its sole discretion, require the Contractor to submit invoices and supporting documentation electronically at any time during the term of this Agreement. The State agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. The Contractor understands and agrees that the State is exempt from the payment of taxes in the State of Mississippi. All payments shall be in United States currency. Payments by state agencies that make payments through the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. Payments by SAAS agencies shall be deposited into the bank account of the Contractor's choice. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Contractor shall remain responsible and liable for full performance.

ARTICLE 5 PERFORMANCE BOND

To secure the Contractor's performance, the Contractor shall procure, submit to ITS with this executed Agreement, and maintain in effect at all times during the course of this Agreement, a performance bond in the amount reflected in the pertinent attached exhibit for each particular category. (In the event Contractor files bankruptcy and the bond herein is revoked or withdrawn in any manner, Contractor shall provide ITS with a certified check in the same amount.) The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the performance bond, and shall identify a contact person to be notified in the event the State is required to take action against the bond. The term of the performance bond shall be concurrent with the term of this Agreement and shall not be released to the Contractor until the expiration/termination of this Agreement. The performance bond shall be procured at the Contractor's expense and be payable to the State of Mississippi. Prior to approval of the performance bond, the State reserves the right to review the bond and require the Contractor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the Contractor. The bond must specifically refer to this Agreement and shall bind the surety to all of the terms and conditions of this Agreement. It is mutually agreed by the Contractor and the State that the State has the right to request payment for a partial amount or the full amount of the performance bond should the Contractor fail to perform as required herein. If the Agreement is terminated due to the Contractor's failure to comply with

the terms thereof, the State shall be entitled to claim against the performance bond. Upon the Contractor's demonstration of performance in accordance with the requirements of this Agreement, the State shall review the requirement for a performance bond annually.

ARTICLE 6 LIQUIDATED DAMAGES

6.1 It is agreed by the parties hereto that time is of the essence, and that in the event of a delay in the delivery and installation deadlines or delay in the satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by the State. In the event of a delay as described herein, Contractor shall pay the State, within five (5) calendar days from the date of receipt of notice, fixed and liquidated damages in the amounts specified in Article 6.2 herein for the specific service category per day for each calendar day of delay caused by Contractor. The State may offset amounts due it as liquidated damages against any monies due Contractor under this Agreement. The State will notify the Contractor in writing of any claim for liquidated damages pursuant hereto on or before the date the State deducts such sums from money payable to Contractor. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of the State.

6.2 The liquidated damages for the various service categories shall be as follows:

- (a) IntraLATA Long Distance: Failure to provide billing detail on CD before the 10th of the month shall result in liquidated damages of \$400.00 per day;
- (b) Toll Free Services: Failure to provide billing detail on CD before the 15th of the month shall result in liquidated damages of \$400.00 per day;
- (c) InterLATA Long Distance: Failure to provide billing detail on CD before the 15th of the month shall result in liquidated damages of \$200.00 per day;
- (d) WAN Equipment and Services: Failure to replace the Cisco Certified Internetwork Expert ("CCIE") within six (6) months of loss of CCIE shall result in liquidated damages of \$1000.00 per day;
- (e) WAN Equipment and Services: Failure to meet specified support response times shall result in liquidated damages of \$50.00 per each fifteen (15) minute interval;
- (f) Statewide Voice and Data Services: Failure to meet stated implementation timeframes shall result in liquidated damages of one (1) full month's credit for the specified service, and
- (g) Statewide Voice and Data Services: Failure to provide billing detail on CD before the 10th of the month shall result in liquidated damages of \$800.00 per day.

6.3 The liquidated damages set forth in this Article shall not apply to delays of performance by the Contractor if such delays were a result of causes beyond the reasonable control and without the fault or negligence of the Contractor and/or its subcontractors. Further, this Article shall not apply to delays caused by the negligence or non-performance of the State.

ARTICLE 7 EMPLOYMENT STATUS

7.1 Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

7.2 Contractor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State.

7.3 Any person assigned by Contractor to perform the services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. The State may, however, direct Contractor to replace any of its employees under this Agreement. If Contractor is notified within the first eight (8) hours of assignment that the person is unsatisfactory, Contractor will not charge the State for those hours.

7.4 Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

ARTICLE 8 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 9 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

9.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Contractor represents all contractors, third parties, and/or subcontractors that the Contractor has assembled. The State is only required to negotiate with the Contractor, as the Contractor's commitments are binding on all proposed contractors, third parties, and subcontractors.

9.2 Except in the event of a merger, acquisition or reorganization, neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

9.3 Contractor must obtain the written approval of the State before subcontracting any portion of this Agreement. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the pricing agreed upon in this Agreement.

9.4 Contractor represents and warrants that any subcontract agreement Contractor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the State, and that the subcontractor acknowledges that no privity of contract exists between the State and the subcontractor and that

the Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Contractor. The Contractor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's failure to pay any and all amounts due by Contractor to any subcontractor, materialman, laborer or the like.

9.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Contractor and the State, where such dispute affects the subcontract.

ARTICLE 10 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of the State to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to the State for the payments or performance due under this Agreement, ITS shall have the right to immediately terminate this Agreement, without damage, penalty, cost or expense to the State of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. The State shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement. In the event ITS terminated this Agreement, Contractor shall receive just and equitable compensation for services rendered by Contractor pursuant to this Agreement prior to termination.

ARTICLE 11 TERMINATION

11.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) days written notice unless the breach is cured within said thirty (30) day period. The non-defaulting party may also pursue any remedy available to it in law or in equity; (c) The State may terminate the Agreement in whole or in part without the assessment of any penalties upon thirty (30) days written notice to the Contractor if the Contractor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) The State may terminate the Agreement without the assessment of any penalties, for any reason after giving thirty (30) days written notice specifying the effective date thereof to the Contractor. The State will be responsible for charges for services provided prior to the date of termination. In the event Contractor prepays Smartnet maintenance to Cisco Systems on behalf of the State, the Contractor will not issue a pro-rata refund of such pre-paid maintenance to the State in the event the State terminates this Agreement pursuant to Article 11.1(d) herein. It is understood that in the event of such termination, rather than the Contractor issuing a pro-rata refund of the pre-paid maintenance, the State shall be entitled to continue receiving Smartnet maintenance services directly from Cisco

Systems through the pre-paid term. Further, if the State terminates this Agreement pursuant to Article 11.1(d) herein, the State will not be able to utilize any unused credits offered as a part of the unbundled services award remaining on the effective date of the termination notice. The provisions of this Article do not limit either party's right to pursue any other remedy available at law or in equity.

11.2 Additional terms related to early termination by any non-state agency, institution, or governing authority are set forth in the "Letter of Agreement" form which is attached hereto as Exhibit I.

ARTICLE 12 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Contractor expressly agrees that under no circumstances shall the State be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Agreement shall affect any statutory rights the State may have that cannot be waived or limited by contract.

ARTICLE 13 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by the State, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

ARTICLE 14 SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

ARTICLE 15 CAPTIONS

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

ARTICLE 16 HOLD HARMLESS

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect and exonerate the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by the negligent or intentional, wrongful acts or omissions of the Contractor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to

perform this Agreement. Contractor will not be responsible for damages resulting from the negligence or intentional, wrongful acts or omissions of the State.

ARTICLE 17 THIRD PARTY ACTION NOTIFICATION

Contractor shall give the State prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Contractor's performance under this Agreement.

ARTICLE 18 AUTHORITY TO CONTRACT

Contractor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

ARTICLE 19 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. The Contractor's address for notice is: Mr. Dennis Brackin, Sales Manager, BellSouth Telecommunications, Inc., Post Office Box 811, Jackson, Mississippi 39205. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 20 RECORD RETENTION AND ACCESS TO RECORDS

Contractor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Customer, ITS, any state or federal agency authorized to audit Customer, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to any of the Contractor's books, documents, papers and/or records that are pertinent to this Agreement to make audits, examinations, excerpts and transcriptions at the Contractor's office where such records are kept during Contractor's normal business hours. All records relating to this Agreement shall be retained by the Contractor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 21 INSURANCE

Contractor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Contractor's personnel, as well as comprehensive general

liability and employee fidelity bond insurance. Contractor will, upon request, furnish the State with a certificate of conformity providing the aforesaid coverage.

ARTICLE 22 DISPUTES

Any issues or provisions of this Agreement in dispute between the Customer and the Contractor which, in the judgment of either party to this Agreement, may materially affect the performance of such party shall be reduced to writing and delivered to the other party. The Customer and the Contractor shall promptly thereafter negotiate in good faith and use every reasonable effort to resolve such dispute in a mutually satisfactory manner. Any such dispute as to a question of fact which is not disposed of in a mutually satisfactory manner shall be submitted to and decided by the Executive Director of ITS or such person as the Executive Director may select. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such decision shall not be a final disposition of the matter if either party still disagrees, and such disagreeing party shall be entitled to seek such other rights and remedies it may have in law or in equity.

ARTICLE 23 COMPLIANCE WITH LAWS

Contractor shall comply with, and all activities under this Agreement shall be subject to, all Customer policies and procedures, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Contractor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 24 CONFLICT OF INTEREST

Contractor shall notify the State of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to the State's satisfaction, the State reserves the right to terminate this Agreement.

ARTICLE 25 CONFIDENTIAL INFORMATION

25.1 Contractor shall treat all State data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of the State. In the event that Contractor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Contractor shall promptly inform the State and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Contractor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Contractor following any termination or completion of this Agreement.

25.2 It is understood by the Contractor that copies of this executed Agreement may be distributed to the governmental agencies, governing authorities, and educational institutions of the State of Mississippi on an as-needed basis for informational purposes.

ARTICLE 26 SOVEREIGN IMMUNITY

By entering into this Agreement with Contractor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 27 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Contractor on the basis of draftsmanship or preparation hereof.

ARTICLE 28 ENTIRE AGREEMENT

28.1 This Contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto. The RFP No. 4000 and Contractor's Proposal in response thereto are hereby incorporated into and made a part of this Contract.

28.2 The Contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. RFP No. 4000 and written addenda, and
- D. Contractor's Proposal, as accepted by ITS, in response to RFP No. 4000.

28.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Contractor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Contractor's Proposal").

ARTICLE 29 SURVIVAL

Articles 12, 16, 20, 25, 26, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 30 DEBARMENT AND SUSPENSION CERTIFICATION

Contractor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 31 NETWORK SECURITY

Contractor and the State understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Contractor and the State agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Contractor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Contractor's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Contractor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

ARTICLE 32 STATE PROPERTY

Contractor shall be responsible for the proper custody of any State-owned property furnished for Contractor's use in connection with work performed pursuant to this Agreement. The Contractor shall reimburse the State for any loss or damage, normal wear and tear excepted.

ARTICLE 33 NEWS RELEASES

News releases pertaining to this Agreement will not be made without the State's prior written approval, and then only in accordance with the explicit written instructions from the State.

ARTICLE 34 WARRANTIES

34.1 Contractor represents and warrants that during the applicable warranty period and during the term of maintenance services purchased, all equipment and services provided by Contractor shall meet or exceed the minimum specifications set forth in RFP No. 4000 and Contractor's Proposal in response thereto.

34.2 Contractor represents and warrants that during the applicable warranty period and during the term of maintenance services purchased, the equipment provided hereunder shall operate without defects in material and workmanship. Contractor's obligations pursuant to this warranty shall include, but are not limited to, the correction of all defects in the equipment and the repair or replacement of the equipment at no cost to the State. In the event the Contractor cannot repair or replace an item of equipment, the Contractor shall refund any fees paid for the equipment.

34.3 Contractor represents and warrants that all work performed hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall perform the services again, at no cost to the State, or if the Contractor is unable to perform the services as warranted, the Contractor shall reimburse the State the fees pre-paid to the Contractor for the services that do not perform as warranted.

ARTICLE 35 LIABILITY ISSUES

Unless jointly agreed otherwise in writing, Contractor's liability shall not exceed the total amount paid by Customer to Contractor under this Agreement. In no event will Contractor be liable to Customer for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Contractor was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud, bad faith; infringement issues; bodily injury; death; physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Contractor. The language contained herein tending to limit the liability of the Contractor will apply to Customer to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Contractor is precluded from relying on any contractual damages limitation language within this article where the Contractor acts fraudulently or in bad faith.

For the faithful performance of the terms of this Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

State of Mississippi, Department
of Information Technology Services,
on behalf of the agencies and institutions
of the State of Mississippi

By: David L. Litchlter

Authorized Signature

Printed Name: David L. Litchlter

Title: Executive Director

Date: 11-23-05

BellSouth MNS, Inc.

By: Fredrick K. Shaftman

Authorized Signature

Printed Name: Fredrick K. Shaftman

Title: President - BBS

Date: 11-18-05

APPROVED AS TO FORM:

Shy Law